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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/032,790 | 10/24/2001 | Daniel A. Keys | 2064-181 | 7203 |
| 22471 | 7590 | 02/05/2004 | EXAMINER | |
| PATENT LEGAL DEPARTMENT/A-42-C BECKMAN COULTER, INC. 4300 N. HARBOR BOULEVARD BOX 3100 FULLERTON, CA 92834-3100 | | | COUNTS, GARY W | |
| | | ART UNIT | PAPER NUMBER | |
| | | 1641 | | |
| DATE MAILED: 02/05/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|------------------------|---------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 10/032,790 | KEYS ET AL. |
| | Examiner | Art Unit |
| | Gary W. Counts | 1641 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires ____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on 12/23/03. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. Applicant's reply has overcome the following rejection(s): ____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1,5-9,16,17 and 26-31.

Claim(s) withdrawn from consideration: 2-4, 10-15 and 18-25.

8. The drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). ____.

10. Other: ____

Christopher L. Chin
CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800 1641

Gary W. Counts
Gary W. Counts
Examiner
Art Unit: 1641

DETAILED ACTION

Attachment to Advisory Action

Continuation of 2 NOTE: Amended claim 1 recite new limitations, i.e. for each target analyte being assayed, independently causing said computer system to compare said generated data to data corresponding to the light signal generated by a known concentration of said target analyte and to determine whether said detected signal is within the known dynamic range of said detector's ability to assay that target analyte, and: (1) where said detected signal is outside the known dynamic range of said detector's assay for a target analyte, causing said computer system to vary the detection time duration relative to said initial detection time duration until the detected signal for such analyte is within the known dynamic range of said detector's assay for that target analyte; or (2) where said detected signal is within the known dynamic range of said detector's assay for a target analyte, causing said computer system to report the presence, absence activity or concentration of such target analyte; so that, for each target analyte being assay the presence, absence, activity or concentration of such target analyte is determined using data corresponding to a light signal that is within the dynamic range of said detector's assay for that target analyte. These new limitations require further consideration and a further search.

Continuation of 5 NOTE: because: of reasons set forth in the previous rejections. Further, applicant's arguments are directed to the new issues, which will not be entered and considered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W. Counts whose telephone number is (703) 305-1444. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (703) 305-3399. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Gary W. Counts
Examiner
Art Unit 1641
January 16, 2004



CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP 1800/641